



1                   **BEFORE THE PUBLIC DISCLOSURE COMMISSION**  
2                   **OF THE STATE OF WASHINGTON**

3 IN THE MATTER OF ENFORCEMENT    )  
4 ACTION AGAINST                    )

PDC CASE NO: 04-446

5 American Cancer Society            )  
6 Northwest States, Great West Division    )

**FINAL ORDER IMPOSING FINE**

7                   Respondent                    )  
8 \_\_\_\_\_

8                   **INTRODUCTION**

9                   The Washington State Public Disclosure Commission (Commission) conducted an  
10 enforcement hearing (adjudicative proceeding) under chapters 34.05 and 42.17 RCW and  
11 chapter 390-37 WAC on June 9, 2005, with respect to the above-captioned matter. The  
12 Commission convened the hearing at the Evergreen Plaza Building, Room 206, 711 Capitol  
13 Way South, in Olympia, Washington. The Commissioners present included: Michael  
14 Connelly, Chair; Jane Noland, Member; Bill Brumsickle, Member; and, Ken Schellberg,  
15 Member. Senior Counsel Nancy Krier, Commission counsel, was also present.  
16

17                  The PDC Staff appeared through Philip E. Stutzman, Director of Compliance. David  
18 J. Delvallee, Advocacy Director for the American Cancer Society, Northwest States, Great  
19 West Division, appeared on behalf of the Respondent.  
20

21                  Also present was Vicki Rippie, PDC Executive Director.

22                  PDC staff members Ruthann Bryant and Jennifer Hansen served as recorders/reporters  
23 of proceedings. The proceedings were recorded. The proceedings were open to the public.

24                  The matter before the Commission concerned allegations that the Respondent failed to  
25 timely report lobbying expenses and contributions in violation of RCW 42.17. The  
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1 Commission was provided a copy of the Report of Investigation dated February 23, 2005, an  
2 Addendum to the Report of Investigation dated May 20, 2005, a Staff Memorandum  
3 summarizing the case dated June 2, 2005, the Notice of Administrative Charges dated May 26,  
4 2005 and a Stipulation of Facts, Violations and Penalty (Stipulation) of the parties signed June  
5 2, 2005 by the Respondent and Vicki Rippie, Executive Director of the Public Disclosure  
6 Commission. After due consideration of the Notice of Administrative Charges, the  
7 Stipulation, and oral argument by Staff and the Respondent, the Commission accepted the  
8 Stipulation by a 4-0 vote. The Stipulation is attached and incorporated by reference into this  
9 Order. The Commission therefore makes the following findings and enters the following  
10 order.  
11

#### 12 FINDINGS

13  
14 Based upon the stipulated facts and violations in the Stipulation, the Commission  
15 enters the following findings.

16 1. The Commission finds that the Respondent committed multiple violations of RCW  
17 42.17.200 as follows:

18 a. By failing to timely report American Cancer Society's grass roots lobbying  
19 expenses totaling \$64,195 for January and February 2004 as follows:

20 (i) January 2004 grass roots lobbying expenses totaling \$22,124 that  
21 were filed 70 days late on April 22, 2004. The expenditures included  
22 \$11,250 for television expenses and \$10,874 for brochures, signs,  
23 printing, mailing, consultants, salaries, travel and office expenses.  
24

25 (ii) February 2004 grass roots lobbying expenses totaling \$42,071 that  
26

were filed 43 days late on April 22, 2004. The expenditures included \$37,350 for television expenses and \$4,721 for consultants, office expenses, travel and salaries.

b. By failing to timely report American Cancer Society's receipt of \$15,000 from the American Lung Association of Washington and \$15,000 from the American Heart Association as contributions to help pay for the grass roots lobbying expenditures of the American Cancer Society. The expenditures were reported 153 days late on August 10, 2004.

2. The Commission finds that the Respondent committed multiple violations of RCW 42.17.180 as follows:

a. By failing to timely report making monetary and in-kind contributions totaling \$44,357 to Healthy Indoor Air for All Washington between November 22, 2004 and March 31, 2005.

**ORDER**

The Commission orders as follows:

1. That the Stipulation of Facts, Violations and Penalty is accepted;
2. That a total civil penalty of \$7,500 is assessed against the Respondent;
3. That \$4,000 of the penalty is suspended based on compliance with the

following conditions:

- a. The Respondent meets with PDC staff within 30 days following the end of each calendar quarter through December 31, 2006 to review its PDC filings.
- b. The Respondent hosts a training class prior to January 1, 2006 for American Cancer Society officials and their invitees taught by PDC staff on PDC

1 reporting responsibilities pursuant to Chapter 42.17 RCW.

2 c. The Respondent commits no further violations of Chapter 42.17 RCW for a  
3 period of four years from the date of entry of the Final Order as determined by  
4 the full Commission.

5 4. That the Respondent is to pay the entire \$3,500 non-suspended portion of the  
6 penalty within 60 days from the date of entry of the Commission's Final Order.  
7

8 The Executive Director is authorized to sign this Order on behalf of the Commission.

9 **RECONSIDERATION OF FINAL ORDER - COMMISSION**

10 Any party may ask the Commission to reconsider this final order. Parties must place  
11 their requests for reconsideration in writing, include the specific grounds or reasons for the  
12 request, and deliver the request to the Public Disclosure Commission Office within **Twenty-**  
13 **One (21) business days** of the date that the Commission serves this order upon the party.

14 Grounds for reconsideration shall be limited to:

- 15
- 16 a) New facts or legal authorities that could not have been brought to the commission's  
17 attention with reasonable diligence. If errors of fact are alleged, the requester must  
18 identify the specific evidence in the prior proceeding on which the requester is relying.  
19 If errors of law are alleged, the requester must identify the specific citation; or  
20 b) Significant typographical or ministerial errors in the order.

21 Pursuant to RCW 34.05.470, the Public Disclosure Commission is deemed to have  
22 denied the petition for reconsideration if, within twenty (20) business days from the date the  
23 petition is filed, the Commission does not either dispose of the petition or serve the parties  
24 with written notice specifying the date by which it will act on the petition. Pursuant to RCW  
25  
26

1 34.05.470, the Respondent is not required to ask the Public Disclosure Commission to  
2 reconsider the final order before seeking judicial review by a superior court.

3  
4 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

5 Pursuant to RCW 42.17.395(5), a **final order** issued by the Public Disclosure  
6 Commission is subject to judicial review under the Administrative Procedures Act, chapter  
7 34.05 RCW. The procedures are provided in RCW 34.05.510 - .598. Pursuant to RCW  
8 34.05.542(2), a petition for judicial review must be filed with the superior court in Thurston  
9 County or the petitioner's county of residence or principal place of business. The petition for  
10 judicial review must be served on the Public Disclosure Commission and any other parties  
11 within **30 days** of the date that the Public Disclosure Commission serves this final order on  
12 the parties.  
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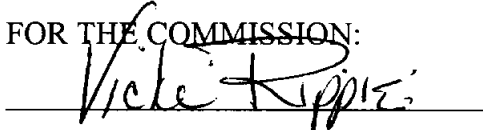
14 If reconsideration is properly sought, the petition for judicial review must be served on  
15 the Public Disclosure Commission and any other parties within thirty (30) days after the  
16 Commission acts on the petition for reconsideration.

17 **ENFORCEMENT OF FINAL ORDERS**

18 The Commission will seek to enforce this final order in superior court under RCW  
19 42.17.395-.397, and recover legal costs and attorney's fees, if the penalty remains unpaid and  
20 no petition for judicial review has been filed under chapter 34.05 RCW. This action will be \*  
21 taken without further order by the Commission.  
22

23 DATED THIS 27<sup>th</sup> day of July, 2005.

24 FOR THE COMMISSION:

25 

26 VICKI RIPPIE, Executive Director

1 *Attachment:* Stipulation of Facts, Violations and Penalty Dated June 2, 2005

2

MAILING DATE OF THIS ORDER:

3

7/27/05

4

Copies of this order to:

5

Linda Dalton  
Senior Assistant Attorney General  
Washington State Attorney General's Office  
Government Compliance and Enforcement Division  
1125 Washington St. SE  
P.O. Box 40100  
Olympia, WA 98504-0100

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Nancy Krier  
Senior Counsel  
Washington State Attorney General's Office  
Licensing and Administrative Law Division  
1125 Washington St. SE  
P.O. Box 40110  
Olympia, WA 98504-0110

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**BEFORE THE PUBLIC DISCLOSURE COMMISSION  
OF THE STATE OF WASHINGTON**

**IN THE MATTER OF ENFORCEMENT  
ACTION AGAINST**

**American Cancer Society  
Northwest States, Great West Division**

**Respondent.**

**PDC CASE NO: 04-446**

**STIPULATION OF FACTS  
VIOLATIONS AND  
PENALTY**

The American Cancer Society, Northwest States, Great West Division (Respondent) and the Public Disclosure Commission Staff (Staff) jointly submit this Stipulation of Facts, Violations and Penalty for the Commission's consideration at the June 9, 2005 meeting in lieu of a full enforcement hearing before the Commission. The parties agree that, pursuant to RCW 42.17.360, the Commission has the authority to accept, decline, or to suggest modifications to this Stipulation. In the interest of avoiding further proceedings, the parties enter this Stipulation.

**Facts**

1. On January 12, 2004, companion bills HB 1868 and SB 5791 were introduced into the 2004 Washington State Legislature. The proposed legislation acted to ban smoking in public places, including bars, taverns, and bowling alleys, and to repeal sections of state law which formerly permitted the designation of smoking and non-smoking areas in public places. The legislation also allowed local government to adopt more restrictive ordinances to further restrict smoking in public places. HB 1868 and SB 5791 failed to pass during the 2004 legislative session.
2. In January of 2004, advertisements presenting a program addressed to the public, a substantial portion of which was intended, designed or calculated primarily to influence state legislation were aired on television stations in Washington State. These expenses were "grass roots lobbying expenses" and were required to be



reported on PDC form L-6 within thirty days after the start of the campaign, which began January 12, 2004 and continued through February 29, 2004 at a cost of \$48,600. Of this total, January television expenses totaled \$11,250 and February television expenses totaled \$37,350. Some of the advertisements, which featured former U.S. Surgeon General C. Everett Coop, stated that they had been sponsored by the Washington BREATHE Alliance, a reference to a loose knit umbrella group of five like minded health organizations, including the American Cancer Society, who shared a common interest of eliminating second-hand smoke in all indoor public places. The American Cancer Society paid for the television ads and had an obligation to report the expenses.

3. The ads, known as the "C. Everett Koop television ads" that aired during the 2004 legislative session were addressed to the public, and were intended, designed or calculated primarily to influence state legislation, by encouraging public support of HB 1868 and SB 5791. There were four versions of the ads. Three versions of the ads constituted reportable grass roots lobbying, and cost \$48,600. The text of the three ads are stated below:

- The "It's Time to Act" ad stated, *"Secondhand smoke is a killer. There is a historic opportunity in Washington to eliminate secondhand smoke from all indoor public places. We protect office workers from toxic smoke. Why not protect all workers. Everyone has the right to breathe clean indoor air. ...and the fact is it's good for business, revenues go up, jobs are created as more people go out to enjoy smokefree places. It's time for our leaders to act. It's your right."*
- The "It's Your Right" ad stated, *"Secondhand smoke is a killer. There is a historic opportunity in Washington to eliminate secondhand smoke from all indoor public places. We protect office workers from toxic smoke. Why not protect all workers."*

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*Everyone has the right to breathe clean indoor air. ...and the fact is it's good for business, revenues go up, jobs are created as more people go out to enjoy smokefree places. Smokefree. It's your right."*

- The "Hotline" ad stated, *"Secondhand smoke is a killer. There is a historic opportunity in Washington to eliminate secondhand smoke from all indoor public places. We protect office workers from toxic smoke. Why not protect all workers. Everyone has the right to breathe clean indoor air. ...and the fact is it's good for business, revenues go up, jobs are created as more people go out to enjoy smokefree places. Call the legislature. Demand smokefree indoor public places."*

The *"It's Your Right"* ad ran 11 times in January and 26 times in February. At the same time, the *"It's Time to Act"* ad ran 39 times in January and 78 times in February. In addition, the *"Hotline"* ad ran 62 times in February. Thus, two of the ads ran at the same time in January, and all three ran at the same time in February. The ads ran as a group and by virtue of their content and timing, were intended to influence state legislation, HB 1868 and SB 5791.

4. David Delvallee, Advocacy Director for the American Cancer Society, acknowledged by letter and on PDC form L-6 that in addition to the television ads, the American Cancer Society spent \$10,874 in January 2004 and \$4,721 in February 2004 on grass roots lobbying expenses, primarily for brochures, signs, printing and consultants.
5. The American Cancer Society received \$15,000 from the American Lung Association of Washington and \$15,000 from the American Heart Association in February 2004 to help pay for its grass roots lobbying expenditures. However, the L-6 reports originally filed by the American Cancer Society did not list the receipt of any contributions to help pay for the grass roots lobbying expenses. Kevin Knox, an employee of the American Cancer Society, acknowledged receipt of the contributions

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for the purpose of supporting the grass roots lobbying efforts of the American Cancer Society and reported receipt of the contributions by letter 153 days late on August 10, 2004.

**Late Reported Contributions for Initiative 901**

6. In addition to the grass roots lobbying activities described above, the American Cancer Society has filed late reports identifying contributions made to Healthy Indoor Air for All Washington, a statewide initiative committee that is currently gathering signatures in an effort to qualify Initiative 901 for the November 8, 2005 ballot.
7. The American Cancer Society reported \$35,000 in monetary contributions and \$9,357 as in-kind contributions, for a total of \$44,357, between 41 and 105 days late on lobbying reporting forms.

<u>Type of Contribution</u>	<u>Amount</u>	<u>Date of Contribution</u>	<u>Due</u>	<u>Filed</u>	<u>Days Late</u>
Monetary	\$25,000	11/22/04	12/15/04	1/25/05 (L-2) *	41
Monetary	\$10,000	2/28/05	3/15/05	5/31/05 (L-3C)	77
In Kind	\$ 758	1/31/05	2/15/05	5/31/05 (L-3C)	105
In Kind	\$ 5,818	2/28/05	3/15/05	5/31/05 (L-3C)	77
In Kind	\$ 2,781	3/31/05	4/15/05	5/31/05 (L-3C)	46
Total	\$44,357				(41 - 105)

\* Contributions made by a lobbyist employer may be reported by the lobbyist on PDC form L-2 in lieu of being reported by the employer on PDC form L-3C.

8. No evidence was found that the American Cancer Society's actions described in the stipulation were done to intentionally hide or conceal its activities.

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Case No.: 04-446

### Violations

Respondent and Staff agree that based upon the facts stipulated above in Paragraphs 1 through 5, the Respondent committed multiple violations of RCW 42.17.200 as follows:

- By failing to timely report American Cancer Society's grass roots lobbying expenses totaling \$64,195 for January and February 2004 as follows:
  - January 2004 grass roots lobbying expenses totaling \$22,124 that were filed 70 days late on April 22, 2004. The expenditures included \$11,250 for television expenses and \$10,874 for brochures, signs, printing, mailing, consultants, salaries, travel and office expenses.
  - February 2004 grass roots lobbying expenses totaling \$42,071 that were filed 43 days late on April 22, 2004. The expenditures included \$37,350 for television expenses and \$4,721 for consultants, office expenses, travel and salaries.
- By failing to timely report American Cancer Society's receipt of \$15,000 from the American Lung Association of Washington and \$15,000 from the American Heart Association as contributions to help pay for the grass roots lobbying expenditures of the American Cancer Society. The expenditures were reported 153 days late on August 10, 2004.

Respondent and Staff further agree that based upon the facts stipulated above in Paragraphs 6 and 7, the Respondent committed multiple violations of RCW 42.17.180 as follows:

- By failing to timely report making monetary and in-kind contributions totaling \$44,357 to Healthy Indoor Air for All Washington between November 22, 2004 and March 31, 2005.

### Penalty

Respondent and staff agree to the following penalty and terms based on the stipulation of facts and violations of RCW 42.17 detailed above:

- A civil penalty of \$7,500. \$4,000 of this penalty will be suspended based on compliance with the following conditions:

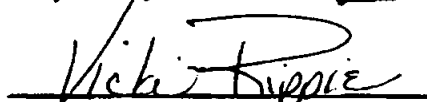
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- o The Respondent meets with PDC staff within 30 days following the end of each calendar quarter through December 31, 2006 to review its PDC filings.
- o The Respondent hosts a training class prior to January 1, 2006 for American Cancer Society officials and their invitees taught by PDC staff on PDC reporting responsibilities pursuant to Chapter 42.17 RCW.
- o The Respondent commits no further violations of Chapter 42.17 RCW for a period of four years from the date of entry of the Final Order as determined by the full Commission.


The Respondent agrees to pay the entire \$3,500 non-suspended portion of the penalty within 60 days from the date of entry of the Commission's Final Order.

The Respondent agrees to comply fully in good faith with all provisions of Chapter 42.17 RCW in the future.

Respectfully submitted this 2<sup>nd</sup> day of June, 2005.

  
Vicki Rippie, Executive Director

6/2/05  
Date

  
David J. Delvallee, Advocacy Director  
American Cancer Society,  
Northwest States, Great West Division

6-2-05  
Date

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